



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/758,186      | 01/15/2004  | Leonard Fuchs        | 30051/39757         | 5366             |

4743 7590 05/03/2007  
MARSHALL, GERSTEIN & BORUN LLP  
233 S. WACKER DRIVE, SUITE 6300  
SEARS TOWER  
CHICAGO, IL 60606

|          |
|----------|
| EXAMINER |
|----------|

LEFF, STEVEN N

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1761

|           |               |
|-----------|---------------|
| MAIL DATE | DELIVERY MODE |
|-----------|---------------|

05/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/758,186

Applicant(s)

FUCHS, LEONARD

Examiner

Steven Leff

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/15/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/15/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

- Claim 6 is objected to because of the following informalities: The word “and” should be replaced with the word “where”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - The phrases “different drink units”, and “multiple number of drink units” are unclear; it is unclear if the phrases are to indicate different drink units of the same type of drink, and/or different drink units of different types drinks.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Eglise et al. (4597506)

With respect to claims 1-6, Eglise et al. teach a method for controlling a drink preparation machine for preparing a multiple number of different drink units on a hot-water basis (col. 5 line 9+), comprising the steps of withdrawing the hot water for the

multiple number of drink units from the same hot water source (col. 5 line 9+), monitoring the performance status of the hot water source (col. 5 line 9+), and controlling the hot water withdrawal in such a way that the hot water withdrawal is released for all drink units at a predetermined full performance status, is blocked for all drink units at a predetermined zero performance status (col. 5 line 31+) and, at a predetermined partial performance, status is blocked for certain drink units and released for other predetermined drink units (col. 1 line 42+, col. 3 line 52+). It is noted that full performance status is indicative of a status where all drinks are available for purchase; partial performance status is when only certain drinks are available.

Eglise et al. continue by teaching that each performance status is limited by a threshold value, and blocking the withdrawal of predetermined drink units if this threshold value is fallen below (col. 1 line 42+). In addition Eglise et al. teach that the full performance status is formed as a performance range (col. 5 line 9+), and that the partial performance status comprises at least one performance range (col. 5 line 9+). It is noted with respect to the phrase a “performance range” that Eglise et al. teach function parameters with respect to the phrase “low”, where the phrase may represent a low level however the production of the beverage will still occur, i.e., a “performance range”. In addition Eglise et al. teach that a performance withdrawal value is established for each drink unit, and deducting this performance withdrawal value from the current performance status, with each withdrawal (col. 4 line 44+). With respect to the phrase “deducting” in claim 5, Eglise et al. teach that the system comprises a microprocessor for monitoring the various parameters under which the beverage machine operates, where the microprocessor determines whether the parameter(s) are outside of a predetermined range with respect to each different beverage as is evidenced by the statement; “particular beverage is not available” (col. 6 line 2+). Therefore, Eglise et al. inherently teach deducting a performance value for specific drinks from the current status value. Eglise et al. further teach heating up the hot water synchronously with the withdrawal (col. 5 line 9+), as is evident by the fact that Eglise et al. teach hot water level indicators and over-temperature cut-off in the hot water source, thus the water is always being heated.


**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SL

  
**KEITH HENDRICKS**  
**PRIMARY EXAMINER**